IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Ghulam Mohammed and anr.
vs.
LRs. Of Nathu Lal.

S.B.CIVIL SECOND APPEAL NO.416/2005 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 28.9.2005 PASSED BY SHRI OM PRAKASH AGRAWAL, ADDITIONAL DISTRICT JUDGE NO.1, CHITTORGARH IN CIVIL APPEAL DECREE NO.22/2003.

DATE OF JUDGMENT ::: 24.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. BR Mehta, for the appellants.

Mr. GS Rathore for Mr.L Kawadia, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

According to learned counsel for the appellant, the suit was filed by the plaintiff Nathu Lal on the ground that the suit premises is required for his business. He died during the pendency of the suit. His other sons are

engaged in other business and profession. The plaintiff's grand son Devendra Kumar, whose need was also included in the need of the plaintiff, was a student. According to learned counsel, there was no need of the plaintiff and if it was there, then the same came to an end on the death of the plaintiff.

I have considered the submissions of learned counsel for the appellant and perused the facts mentioned in the judgments of the courts below.

It is clear from the plaint itself that the plaintiff filed suit for eviction of his tenant on the ground of personal necessity i.e. for his business. He also pleaded that his grand son will also do the business with him. Two courts below considered the fact of death of the plaintiff and clearly held that the plaintiff's grand son Devendra Kumar himself appeared in the witness box though he admitted that he is student but he has shown the willingness to do the business and he is doing business. Since two courts below concurrently recorded finding of facts after appreciation of the facts and entire evidence, therefore, I do not find any reason to interfere in such findings of fact in second appeal.

In view of the above, the appeal of the appellants deserves to be dismissed.

At this stage, learned counsel for the appellants

submitted that the appellants be given some time to vacate the suit premises.

Looking to the totality of the facts, this Court deems it proper to grant some time to the appellants to vacate the suit premises.

Hence, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of one month that he shall hand over the vacant possession to the landlord by or before 30.6.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, within a period of two months from today before the trial court or directly to the landlord, the decree under challenge shall not be executed till 1.7.2007. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial court.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed.

(PRAKASH TATIA), J.

S.Phophaliya